

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)	
CAROL BROOKS against DTE ENERGY)	
COMPANY and DTE ELECTRIC COMPANY)	Case No. U-18012
_____)	

At the October 25, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

History of Proceedings

On January 4, 2016, Carol Brooks (Complainant) filed a complaint against DTE Energy Company (DTE Energy) alleging that DTE Energy violated MCL 460.9q and MCL 460.10t when it improperly disconnected her electric service, in part and then in whole, on December 5, 2014, and January 5, 2015, respectively.¹ On March 24, 2016, DTE Electric Company (DTE Electric) filed an answer to the complaint,² denying Complainant's alleged statutory violations and requesting that the Commission dismiss the complaint in its entirety with prejudice and grant any other relief as deemed appropriate.

¹ On January 4, 2016, Complainant filed a complaint, along with a first amended complaint. The allegations mentioned here address those identified in the first amended complaint.

² In its answer, DTE Electric states that it is the proper respondent in this matter.

A prehearing conference was held on April 7, 2016, before Administrative Law Judge Sharon L. Feldman (ALJ). Complainant, DTE Electric, and the Commission Staff (Staff) participated in the proceedings.

Subsequently, Complainant filed a second amended complaint on August 25, 2016, predominantly adding allegations pertaining to applicable rule violations, as a result of the improper disconnection of electric service to her residence on December 5, 2014, and January 6, 2015.³ On September 15, 2016, DTE Electric filed its answer to the second amended complaint, denying Complainant's alleged statutory and rule violations and, again, requesting that the Commission dismiss the complaint in its entirety with prejudice and grant any other relief as deemed appropriate.

The ALJ conducted an evidentiary hearing on January 18 and February 7, 2017. Complainant and DTE Electric filed initial briefs on March 16, 2017, and reply briefs on April 5, 2017. On June 15, 2017, the ALJ issued a Proposal for Decision (PFD). DTE Electric filed exceptions to the PFD on July 12, 2017, and Complainant filed replies to exceptions on July 26, 2017.

The record consists of 383 transcript pages and 38 exhibits admitted into evidence.

³ Complainant's first two pleadings indicated that the entire disconnection of electric service to her residence occurred on January 5, 2015. Complainant's second amended complaint, however, stated that the entire disconnection of electric service occurred on January 6, 2015.

The Complaint

The complaint⁴ alleged that DTE Electric violated numerous statutes and rules,⁵ as a result of Complainant's electric service being improperly disconnected, in part on December 5, 2014, and then in whole on January 6, 2015.⁶ To support these alleged violations, Complainant claimed that (1) contrary to DTE Energy and DTE Electric's belief, her electric service was not disconnected (i.e., shutoff) on August 31, 2009, because she experienced no disruption of electric service from August 31, 2009, to December 5, 2014; (2) she continued to receive a bill from DTE Energy from August 31, 2009, to December 5, 2014, and has paid every bill that she has ever received;⁷ (3) on December 5, 2014, DTE Energy and DTE Electric caused her electric furnace to stop working; (4) on December 5, 2014, following the disruption in electric service to her furnace, she called DTE Energy and DTE Electric's resolution office to inquire into what had happened and was told that she owed DTE Energy and DTE Electric \$7,000 because she had not paid her electric bill in

⁴ The "complaint," from here forward, refers to Complainant's second amended complaint filed on August 25, 2016.

⁵ The complaint asserted violations of MCL 460.9q; MCL 460.10t; Mich Admin Code, R 460.106 (Rule 6); Mich Admin Code, R 460.126 (Rule 26); Mich Admin Code, R 460.138 (Rule 38); Mich Admin Code, R 460.141 (Rule 41) (1), (3), and (7); Mich Admin Code, R 460.144 (Rule 44) (2); Mich Admin Code, R 460.148 (Rule 48) (1); Mich Admin Code, R 460.151 (Rule 51); Mich Admin Code, R 460.152 (Rule 52); and Mich Admin Code, R 460.163 (Rule 63).

⁶ The complaint also alleged several tort claims, including intentional infliction of emotional distress and defamation. However, the Commission has no jurisdiction over tort claims, and because those tort claims were later stipulated as withdrawn from this matter, no further discussion of these tort claims is necessary for purposes of this order.

⁷ After the conclusion of the service period from August 12, 2009, to September 14, 2009, and up until January 6, 2015, Complainant ceased being billed for electric consumption at her residence. Complainant did, however, continue to be billed for the gas consumption at her residence during this time, but Complainant's gas service is not at issue in this case.

five years;⁸ (5) from December 6, 2014, to December 12, 2014, she personally visited DTE Energy and DTE Electric's offices to, again, inquire into what had happened with the disruption in electric service and to request documentation to substantiate the alleged outstanding bill; (6) during her office visits, DTE Energy and DTE Electric's employees refused or were unable to provide her with any documentation and accused her of stealing electricity; (7) she did not engage in "unauthorized use of utility service;" (8) during her office visits, DTE Energy and DTE Electric's employees were made aware that she was a low-income customer; (9) despite knowing that the claim was in dispute, DTE Energy and DTE Electric physically disconnected all electric service to her residence on January 6, 2015; (10) DTE Energy and DTE Electric did not send her a shutoff notice, or otherwise attempt to contact her whatsoever, before or after disconnecting her electric service; (11) communication from DTE Energy and DTE Electric immediately following the disconnection of electric service was scarce, and at no point was she informed of her right to an informal hearing or to file a complaint with the Commission; (12) she was informed that the only option to have her electric service restored was to pay DTE Energy and DTE Electric the entire outstanding bill, which failed to take her financial circumstances into consideration and failed to provide her with a reasonable payment arrangement for the alleged backbill; (13) on November 23, 2015, DTE Energy and DTE Electric conducted a theft investigation and concluded that she had not committed theft with regard to the electric consumption at her residence from August 31, 2009, to January 6, 2015; (14) DTE Energy and DTE Electric failed to follow disputed claim procedures under Rule 51; and (15) despite repeated requests from December 2014 to February 2016, electric service to her residence was not restored until February 24, 2016.

⁸ Following further discussions, Complainant was later informed that her outstanding bill was \$6,750, not \$7,000.

Proposal for Decision

The ALJ found that there were two key legal disputes involved in this matter: (1) whether Complainant engaged in unauthorized use of electric service, and (2) whether Complainant remained a customer of DTE Electric, to whom protection of applicable statutes and rules apply.

a. Unauthorized Use

The ALJ found that Complainant had not engaged in unauthorized use of electric service from August 31, 2009, to January 6, 2015. Based on the definition of “unauthorized use” in MCL 460.9d(9)(f) and subrule (ss) of Mich Admin Code, R 460.102 (Rule 2), the ALJ found that Complainant’s electric consumption during that timeframe did not amount to theft, fraud, interference, or diversion of service. More specifically, the ALJ opined that “[m]erely failing to discover that you are not being billed for electric service does not constitute theft, fraud, interference or diversion,” and “[Complainant] lacked any intent to obtain service without paying for it, and lacked actual knowledge that she was not paying for the service she was using” PFD, pp. 68-69. The ALJ found that DTE Electric did not, in fact, disconnect Complainant’s electric service on August 31, 2009. The ALJ, therefore, concluded that “[Complainant’s] use of electricity was authorized, not unauthorized,” as DTE Electric, as a result, “clearly agreed to [continue to] provide service to [Complainant] under the terms of its tariffs, Commission rules, and other applicable statutory provisions,” since “DTE [Electric] had been providing service to [Complainant’s residence] for decades,” and “DTE [Electric] took no other affirmative steps to indicate to [Complainant] that she was no longer ‘authorized’ to receive service.” *Id.*, p. 69. The ALJ then concluded that the failure to bill Complainant from August 31, 2009, to January 6, 2015, was “an inexplicable billing error” by DTE Electric, not unauthorized use, as DTE Electric asserted. *Id.*

b. Customer Status

Based on her finding that DTE Electric did not disconnect Complainant's electric service on August 31, 2009, the ALJ concluded that Complainant remained a "customer," as defined in Rule 2(k).⁹ Although DTE Electric argued that a "purchaser" is literally one who pays, the ALJ disagreed, concluding that "[Complainant] did not lose her status as a customer because DTE [Electric] stopped billing her for electric service." PFD, p. 70. Rather, the ALJ opined that "[Complainant] remained obligated to pay for the electrical service she received . . .," and accepting DTE Electric's purchaser argument "would lead to absurd results." *Id.*, pp. 70-71. The ALJ also pointed out the fact that "DTE [Electric] took no affirmative steps to . . . advise [Complainant] that she was no longer a customer," and DTE Electric actually referred to Complainant as a customer in its initial brief. *Id.*

c. Alleged Violations

Having addressed the central key legal issues above, and having also found that DTE Electric knew Complainant was disputing DTE Electric's claim that she owed \$6,750, knew Complainant was a low-income customer, and failed to provide a shutoff notice to Complainant with regard to the disconnection of electric service on January 6, 2015, the ALJ ultimately concluded that DTE Electric violated MCL 460.10t, Rule 26, Rule 38(1), Rule 41(1) and (7), Rule 48(1), Rule 51(1), Rule 52, and Rule 63.

d. Proposed Relief

In light of the above, and based on authority in MCL 460.10c, the ALJ proposed the following relief: (1) a hearing to determine reasonable attorney fees and costs for Complainant; (2) a

⁹ Per Rule 2(k), " 'Customer' means a purchaser of electricity or natural gas that is supplied or distributed by a utility for residential purposes."

\$10,000 fine against DTE Electric; (3) an order directing DTE Electric, except in emergency situations under Mich Admin Code, R 460.136, to cease and desist from shutting off service to eligible low-income customers during the heating season based on a claim of unauthorized usage, without first providing the customer an opportunity for a hearing to dispute the claim, and directing DTE Electric to develop a shutoff notice for unauthorized use similar to the form of notice used by Consumers Energy Company and to provide that form to the Staff for review; (4) permit DTE Electric to only backbill Complainant for electric service usage over the 12-month period ending January 6, 2015,¹⁰ consistent with Rule 26, taking Complainant's financial circumstances into consideration and offering Complainant a payment plan that allows Complainant to pay the backbilled amount over at least a 12-month period; and (5) ask the Staff to conduct an investigation to determine how DTE Electric recorded 60 meter readings over a five-year period from the meter at Complainant's residence and did not realize that it was not billing anyone for the electricity that was being consumed during that time, causing its ratepayers to have to absorb such costs during that timeframe. PFD, pp. 86-87.

Exceptions and Replies

In its exceptions, DTE Electric contests 10 issues within the PFD involving: (1) unauthorized use; (2) customer status; (3) billing procedures in Rule 26(2)(b); (4) low-income customer status; (5) billing error; (6) Rule 38, Rule 41, Rule 51(1), Rule 52, and Rule 63 violations; (7) proposed attorney fees and costs; (8) the proposed \$10,000 fine; (9) the proposed cease and desist order; and (10) the proposed investigation. Based on its exceptions, DTE Electric therefore requests that the

¹⁰ Although the PFD states January 6, 2017, the Commission finds this to be a typographical error and, therefore, has corrected it accordingly to correspond with the facts of this case.

Commission reject all of the ALJ's findings and recommendations, order Complainant's complaint be dismissed in its entirety with prejudice, and issue any other relief that the Commission determines to be reasonable.¹¹

In her replies to DTE Electric's exceptions, Complainant contends that all of DTE Electric's exceptions must be rejected and requests that the Commission adopt the ALJ's findings and recommendations.¹¹

Discussion

1. Unauthorized Use

In its exceptions, DTE Electric contends that "the [ALJ's] finding that [Complainant's] use of electric service was authorized is not supported by the statutory regulatory definition of unauthorized use." DTE Electric's exceptions, p. 2. More specifically, DTE Electric argues that "the definition of unauthorized use is broad enough to cover conduct such as [Complainant's]." *Id.*, p. 3. In support, DTE Electric contends that "the phrase 'including but not limited to' in both MCL 460.9d(9)(f) and R 460.102(ss) may be read to include any instance where a customer takes service without paying for it, as is the case here where [Complainant] made no payments in consideration of receiving electric service for five years." *Id.*, p. 4. DTE Electric further contends that there is "little support in the evidentiary record" to conclude that Complainant lacked intent or actual knowledge, arguing that other facts, such as the fact "[Complainant] received over 60 billing statements throughout the course of five years that did not contain electric charges," should be given more weight than Complainant's testimony. *Id.* Additionally, DTE Electric disputes that

¹¹ For readability purposes, further details regarding the substance of DTE Electric's exceptions and Complainant's replies to exceptions are set forth accordingly under the "Discussion" heading below.

Complainant's use of electric service was authorized, as the ALJ concluded, arguing that "[t]here is no provision under the Company's tariffs that allows a customer to take service without payment," and "DTE Electric's records show that in August 2009 [Complainant's] electric service was properly disconnected for nonpayment." *Id.*, p. 5.

In her reply to DTE Electric's exceptions, Complainant challenges DTE Electric's proposed definition of "unauthorized use," arguing that there are only four categories of what constitutes unauthorized use in the definition, and accepting DTE Electric's proposed definition "would render R 460.126(2)(b) meaningless" and would "leave[] thousands of customers at risk [of being stripped of basic protections that are afforded to customers]." Complainant's replies to exceptions, pp. 3-4. Based on this, Complainant contends that this exception, along with DTE Electric's exceptions 3, 5, 6, 7, 8, and 10, must be rejected.

Per MCL 460.9d(9)(f), which is substantially mirrored in Rule 2(ss),¹² "unauthorized use" is defined as "theft, fraud, interference, or diversion of electric or natural gas service, including, but not limited to, meter tampering, bypassing, and service restoration by anyone other than the utility or its representative."

Although DTE Electric continues to argue that the use of "including, but not limited to" should be broadly interpreted to include Complainant's conduct, the Commission finds DTE Electric's argument to be misguided. The word "including" indicates a partial list (*see, Black's*

¹² Rule 2(ss) states:

"Unauthorized use of utility service" means theft, fraud, interference, or diversion of service, including but not limited to meter tampering (any act which affects the proper registration of service through a meter), by-passing (unmetered service that flows through a device connected between a service line and customer-owned facilities), and service restoration by anyone other than the utility or its representative.

Law Dictionary (8th ed)) and, in this context, is a partial exemplary list for what is specifically meant by “theft, fraud, interference, or diversion of electric or natural gas service” and nothing more. Further, “ ‘words grouped in a list should be given related meaning.’ ” *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 114; 754 NW2d 259 (2008). As a result, in finding “theft, fraud, interference, and diversion” to be intentional acts, based on their definitions,¹³ their related meanings among one another, and the partial exemplary list provided, the Commission finds that a customer cannot be deemed to have engaged in “unauthorized use,” within the meaning of MCL 460.9d(9)(f) and Rule 2(ss), absent a showing of intent to engage in theft, fraud, interference, or diversion on the part of that customer.

Here, there is no dispute that Complainant was an authorized user of electric service immediately prior to August 31, 2009, and there is no dispute that electric service to Complainant’s residence continued on August 31, 2009, and thereafter, despite DTE Electric’s contention that such service was disconnected on August 31, 2009. Further, Complainant testified that her electric service was not disconnected on August 31, 2009, and that she did not know that she was not being billed for electric service from August 31, 2009, to January 6, 2015 (*see*, 4 Tr 143), testimony that the ALJ found to be credible. *See*, PFD, pp. 51, 55. Additionally, DTE Electric conceded that Complainant did not engage in any criminal or unlawful acts. *See*, DTE Electric’s Initial Brief, p. 11. Moreover, the fact that DTE Electric, likewise, did not notice an error within the 60+ billing cycles weakens its argument that Complainant herself knew or should have known something was not right. In addition, if a “wrongful use” (i.e., “any instance where a customer takes service without paying for it”) standard were adopted, a slippery slope could be created where customers who fail to pay their bills on time, or those who are not charged or are

¹³ *See, Black’s Law Dictionary* (8th ed).

undercharged, through no fault of their own, could then be considered to have engaged in “unauthorized use,” since they would have taken service without paying for it when payment was due. As a result, based on a lack of intent evidenced by the record in this case, the Commission agrees with the ALJ and finds that Complainant did not engage in “unauthorized use” of electric service, as defined in MCL 460.9d(9)(f) and Rule 2(ss), from August 31, 2009, to January 6, 2015.

2. Customer Status

DTE Electric contends that “the [ALJ’s] finding that [Complainant] was a ‘customer’ of DTE Electric when her service was disconnected on January 6, 2015 ignores facts in the evidentiary record and the regulatory definition of ‘customer.’ ” DTE Electric’s exceptions, p. 6. More specifically, DTE Electric contends that, contrary to the ALJ’s findings, it “did take steps to notify [Complainant] that her service would be terminated in August 2009 and received no response,” citing three shutoff notices and three phone calls in advance of the August 31, 2009 shutoff, along with having received “no corresponding payment” from Complainant following any of the notices and calls. *Id.*, p. 7. DTE Electric further contends that Complainant also received notice that she was no longer a customer “[w]hen electric service charges ceased to show on her monthly bill for over five years” *Id.* DTE Electric argues that “it is inconceivable that an intelligent person such as [Complainant] who takes electric service without payment for years could be considered a customer,” arguing that a customer, as defined in Rule 2(k), can only be someone who “pay[s] valuable consideration.” *Id.* (Footnote omitted.) With that, DTE Electric then concludes that, because “[Complainant] never paid, or even offered to pay for any of the roughly \$7,000 in electric service that she used over the course of five years[,] . . . [Complainant] was not a customer of DTE Electric on December 5, 2014, or January 6, 2015.” *Id.*, pp. 7-8.

In response, albeit focusing more on replying to DTE Electric's fourth exception, Complainant contends that DTE Electric's argument must be rejected because she "was a low-income customer at the time of the shutoff."¹⁴ Complainant's replies to exceptions, p. 4.

The Commission finds that the ALJ appropriately addressed this issue. Further, while DTE Electric did provide several shutoff notices with its bills to Complainant, as a customer, prior to August 31, 2009, electric service nevertheless continued after all of those shutoff notices were provided, including after August 31, 2009, and a payment of \$326.69 was made on Complainant's behalf by the Michigan Department of Health and Human Services (MDHHS) on September 3, 2009. *See*, Exhibit R-1, p. 4. Therefore, by applying the definition of "customer" in Rule 2(k) to the facts of this case, Complainant remained a "customer" from August 31, 2009, to January 6, 2015, because she was obligated to pay for the residential electric service that continued to be supplied and distributed to her by DTE Electric during that time. Moreover, to deem otherwise, by adopting DTE Electric's argument, could render any customer who fails to pay their residential electric bill, even a day late, to no longer be a customer – an interpretation with which the Commission fundamentally disagrees.

3. Billing Procedures in Rule 26(2)(b)

DTE Electric argues that "the [ALJ's] finding that the billing procedures in R 460.126(2)(b) applies [sic] in this matter is unsupported by law or the evidentiary record." DTE Electric's exceptions, p. 8. Additionally, DTE Electric takes exception to the latter sentence of the following:

¹⁴ Because the remainder of Complainant's argument on this is more relevant to DTE Electric's fourth exception, the remainder of such argument is detailed under the heading "Low-Income Customer Status."

If DTE [Electric] refused to believe that [Complainant] did not engage in unauthorized use, DTE [Electric] was permitted to bill her for the entire amount it believed was owed, as quoted above in R 460.126[(2)(a)]. Nonetheless, DTE [Electric] was not authorized to refuse to produce a bill until she agreed to pay the bill, to deprive her of an opportunity to contest DTE[] [Electric's] charge of unauthorized use or to contest the amount of its estimate, or to disconnect or refuse to restore her service while her dispute was being resolved.

PFD, p. 72. To support this, DTE Electric argues that “[t]his finding erroneously assumes that there was a bill to produce;” “Company records do not indicate that a hearing was not available to [Complainant], and at no time did DTE Electric inform [Complainant] that she could not contest the estimate;” and DTE Electric would only have been precluded from disconnecting or refusing to restore Complainant’s service if she did not engage in unauthorized use and had requested a hearing. DTE Electric’s exceptions, pp. 8-9. Lastly, DTE Electric contends that, contrary to the ALJ’s discussion on these rules, Mich Admin Code, R 460.110(d); Mich Admin Code, R 460.111(b)(4); and Rule 6 are not applicable in this matter “because the Company was not requesting a deposit from [Complainant] for the continuation or restoration of electric service [but was rather] . . . seeking to recover payment for the amount of unauthorized use of utility service that [Complainant] received from August 31, 2009 through January 6, 2015” *Id.*, p. 10.¹⁵

Rule 26 provides, in relevant part:

(2) If a utility undercharges a customer, the following provisions apply:

(a) In cases that involve unauthorized use of utility service the utility may backbill the customer for the amount of the undercharge using the commission-approved process for estimating the bill. The utility may charge fees for unauthorized use of utility service in accordance with commission-approved tariffs.

¹⁵ Since Complainant’s response to this exception was already addressed in her response to DTE Electric’s unauthorized use exception set forth above, regurgitation of such response here is unnecessary.

(b) In cases that do not involve unauthorized use of utility service, the utility may backbill the customer for the amount of the undercharge during the 12-month period immediately preceding discovery of the error, and the utility shall offer the customer reasonable payment arrangements for the amount of the backbill, which shall allow the customer to make installment payments over a period at least as long as the period of the undercharge. The utility shall take into account the customer's financial circumstances when setting payment amounts.

Here, because Complainant did not engage in unauthorized use and because Complainant was a customer, as set forth above, the Commission finds that the billing procedures articulated in Rule 26(2)(b) apply for the undercharged amount involved in this case. Therefore, DTE Electric may only backbill Complainant for the undercharge that occurred during the 12-month period immediately preceding the January 6, 2015 discovery of the electric service error, and such backbill must allow Complainant to make installment payments over at least a 12-month period and must also take Complainant's financial circumstances into consideration.

The Commission additionally finds that, under the Commission's residential billing rules, a customer is entitled to view an estimated backbill and has the right to dispute that estimated amount before agreeing to a payment plan. Further, a utility is required to provide information on the process to dispute a claim, along with notice and an opportunity for a hearing, and a utility cannot shutoff or refuse to restore service to a customer when that utility is advised that a claim is in dispute, even if such advisement is merely provided by the customer in person or by phone.

4. Low-Income Customer Status

DTE Electric contends that "[t]here is no evidence in the record that [Complainant] was a low-income customer . . . as of January 6, 2015," arguing that Complainant's statements alone were not enough to allow it to determine that Complainant was a low-income customer. DTE Electric's exceptions, p. 11.

In response, again, Complainant contends that she “was a low-income customer at the time of the shutoff.” Complainant’s replies to exceptions, p. 4. In support of her response, Complainant states that “DTE [Electric] does not cite to any authority for its claim that a customer must follow a specific procedure to inform DTE [Electric] of their protected status as a low-income customer.” *Id.*, p. 5. Complainant further cites to her testimony wherein she made DTE Electric aware of her low-income customer status when she discussed payments she had received from MDHHS with one of DTE Electric’s employees on December 8, 2014, which Complainant contends the employee acknowledged in her testimony, when she denied Complainant’s request to seek assistance from agencies that help low-income customers based on DTE Electric’s contention that Complainant had engaged in unauthorized use. *Id.*, pp. 5-6.

Per MCL 460.10t(6)(b), an “eligible low-income customer” means:¹⁶

. . . a customer whose household income does not exceed 150% of the poverty level, as published by the United States Department of Health and Human Services, or who receives any of the following:

- (i) Assistance from a state emergency relief program.
- (ii) Food stamps.

¹⁶ A parallel definition of “eligible low-income customer” is also found in Rule 2(n), which states:

“Eligible low-income customer” means a utility customer whose household income does not exceed 150% of the federal poverty guidelines as published by the United States department of health and human services or who receives any of the following:

- (i) Supplemental security income or low-income assistance through the department of human services or successor agency.
- (ii) Food stamps.
- (iii) Medicaid.

(iii) Medicaid.

According to the evidence, the Commission finds that Complainant has not met her burden of proof, by a preponderance of the evidence, that she was, in fact, a low-income customer as of January 6, 2015. Specifically, although Complainant verbally informed one of DTE Electric's employees, on December 8, 2014, that she received low-income assistance through MDHHS, the Commission finds that Complainant's testimony fails to amount to the tangible proof contemplated under MCL 460.10t(6)(b) and Rule 2(n) to show that Complainant was a low-income customer as of January 6, 2015. Further, according to Complainant's account summary from April 20, 2007, to May 4, 2016, set forth in DTE Electric's Exhibit R-1, every payment after February 7, 2011, is indicated as being a "PAYMENT" versus an "MDHS PAYMENT," tending to disprove Complainant's verbal testimony above. As a result, the Commission does not adopt the ALJ's recommended finding that Complainant was a low-income customer as of January 6, 2015, based on the record in this proceeding.

5. Billing Error

DTE Electric argues that "[t]he evidentiary record is devoid of any evidence showing that any of these billing errors [within Rule 2(c)] are applicable here, and notably the PFD does not specifically identify which category DTE Electric's alleged billing error fits as required by the APA." DTE Electric's exceptions, p. 12. (Footnotes omitted.) DTE Electric further contends that "[t]his is a case of unauthorized use that the Company appropriately sought payment for under R 460.126(2)(a)." *Id.*, p. 13.¹⁵

The Commission disagrees with DTE Electric's argument and notes the conflicting arguments that DTE Electric, on one hand, claims that the circumstances of this case are not tantamount to a billing error but yet conversely contends that Rule 26(2)(a), under the heading "Billing error," is

applicable and appropriate. With that being said, by DTE Electric failing to disconnect Complainant's electric service on August 31, 2009, and failing to bill Complainant for electric service accordingly after the service period thereafter (i.e., after September 14, 2009), the Commission finds that DTE Electric specifically committed a billing error under Rule 2(c)(vii), making Rule 26(2)(b) the appropriate procedure for DTE Electric to recoup undercharges involved in this case.

6. Rule 38, 41, 51, 52, and 63 Violations

DTE Electric contends that "[Complainant] is not entitled to the statutory protections afforded to a 'customer' when she is unwilling to perform the obligations (i.e. pay for service) of a 'customer,' " therefore arguing that the Commission should reject the ALJ's findings that DTE Electric violated these rules. DTE Electric's exceptions, p. 13.¹⁵

Based on the Commission's findings in Section 2, along with the fact that DTE Electric did not provide notice with regard to disconnecting Complainant's electric service on January 6, 2015, did not thereafter leave a shutoff notice at Complainant's residence, and failed to follow applicable dispute resolution rules by failing to acknowledge that Complainant, as a customer, was disputing DTE Electric's claim, the Commission finds that the ALJ appropriately concluded that DTE Electric violated Rules 38(1), 41(1) and (7), 51(1), 52, and 63.

7. Proposed Attorney Fees and Costs

DTE Electric argues that the Commission should reject the ALJ's proposal that a separate proceeding be initiated to allow Complainant to recover attorney fees and costs, because Complainant "was not an eligible low-income customer [and] . . . was engaging in authorized [sic] use from August 31, 2009 through January 6, 2015 when she took electrical service without payment." DTE Electric's exceptions, p. 14.¹⁵

The attorney fees and costs proposed by the ALJ in this matter were derived from MCL 460.10c, as a result of the ALJ's finding that DTE Electric violated MCL 460.10t. However, because the Commission, as discussed in Section 4 above, finds that Complainant was not a low-income customer as of January 6, 2015, based on the record in this proceeding, the Commission therefore finds that DTE Electric has not violated MCL 460.10t. Consequently, although the Commission concurs with the ALJ that DTE Electric violated Rules 26, 38(1), 41(1), 41(7), 51(1), 52, and 63, the available sanctions under MCL 460.55 do not allow a party to recover reasonable attorney fees and costs as a result of such violations. Therefore, the ALJ's recommendation to award attorney fees and costs cannot be adopted in this matter.

8. Proposed \$10,000 Fine

DTE Electric contends, in referencing its first seven exceptions, that "there was no violation of the statutory provisions or regulations cited by [Complainant] in the Second Amended Complaint because [Complainant] engaged in unauthorized use and was not a low-income customer, or even a customer, on January 6, 2015." DTE Electric's exceptions, p. 14.¹⁵

The \$10,000 fine proposed by the ALJ in this matter was also derived from MCL 460.10c, as a result of the ALJ's finding that DTE Electric violated MCL 460.10t. As such, in finding no violation of MCL 460.10t, and in being limited to the available sanctions provided under MCL 460.55 for DTE Electric's violations of Rules 26 (backbilling procedures), Rule 38(1) (10-day advance shutoff notice), Rule 41(1) (notice immediately before shutoff), Rule 41(7) (notice of actual shutoff left upon premise), Rule 51(1) (disputed claim procedures), Rule 52 (opportunity for informal hearing), and Rule 63 (shutoff pending decision of disputed claim), the Commission finds that a \$200 fine for each of these seven violations, resulting in a total penalty of \$1,400, is more

appropriate in this case based on the available sanctions provided by statute.¹⁷ The Commission, however, would like to note that it takes violations of its billing rules very seriously and will issue sanctions when violations are found. *See, e.g.,* the Commission’s June 9, 2016 order in Case No. U-18002. Therefore, the reduced sanctions between those proposed in the PFD and the actual sanctions imposed by this order are not to be interpreted as diminishing the level of concern the Commission has about DTE Electric’s billing practice errors.

9. Proposed Cease and Desist Order

DTE Electric argues, “Based on the plain language of [MCL 460.10t], the shutoff rights of low-income customers distinctly apply only in cases where there is a delinquent account and not in cases of unauthorized use.” DTE Electric’s exceptions, p. 16. DTE Electric further argues, “Similarly, Rule 460.148 provides winter protection rights for low-income customers[,] . . . with the explicit statement that the requirements of the rule do not apply in cases of unauthorized use” *Id.* DTE Electric, therefore, argues that “the recommendation that DTE Electric cease shutting off low-income customers during the heating season without notice and an opportunity for a hearing in cases of unauthorized [sic] is contradictory to the Commission’s own billing rules.” *Id.* DTE Electric further contends that “this recommendation would create an unreasonable burden on utilities and subject the public to health and safety risks.” *Id.*, p. 17. DTE Electric also finds it “troubling . . . that the [ALJ] recommends that DTE Electric create and use a form similar to that contained in Exhibit C-17 to provide to low-income customers before service is terminated for unauthorized use[,]” as “[t]he record is devoid of any information to support that this form has any relevance in this proceeding[,]” and “the ALJ recognized that Exhibit C-17 could not be used by

¹⁷ MCL 460.55 authorizes the Commission to make and prescribe regulations, provides that it shall be the duty of regulated utilities to obey such rules and regulations, and further provides that refusing or neglecting to do so shall make the regulated utility liable for a penalty.

Complainant to establish a standard of conduct for DTE Electric. . . .” DTE Electric’s exceptions, pp. 17-18. Lastly, DTE Electric argues that this matter is only about Complainant and “should not be an opportunity for the Commission to impose a poorly crafted public policy upon DTE Electric or any other public utility that is based upon naïve assumptions without first holding a transparent, public hearing whereby the public . . . can provide their input into the proposed policy.” *Id.*, p. 18.

In her reply, Complainant contends that the ALJ’s proposed “ruling ensures that other low-income customers are not left without heat in the middle of winter based on an erroneous allegation of ‘unauthorized use.’ ” Complainant’s replies to exceptions, p. 7. Complainant further contends that the ALJ’s proposed ruling would also “provide[] other low-income customers with a quick, straightforward avenue to contest an erroneous claim of ‘unauthorized use,’ without the need to hire legal counsel – an option not available to most low-income customers” *Id.* In response to DTE Electric’s “unduly burdensome” argument, Complainant states that “DTE [Electric] essentially argues that it should be entitled to sit as judge, jury, and executioner on its charge of ‘unauthorized use’ ” and that “it should be entitled to immediately disconnect an eligible low-income customer’s service in the middle of winter.” *Id.* As far as DTE Electric’s argument and reference to MCL 460.10t and Rule 48, Complainant counters by saying:

DTE[] [Electric’s] argument . . . overlooks the fact that R 460.148 excepts situations where unauthorized use of utility service ***has occurred***, not simply where DTE [Electric] alleges that it has occurred. Nothing in the [ALJ’s] recommendation contradicts R 460.148 or MCL 460.10t because it does not prevent the shutoff of utility service in cases where ‘unauthorized use’ has occurred. Instead, it simply allows a customer an opportunity to contest an allegation of ‘unauthorized use’ by a service provider.

Id., p. 8. Complainant further argues that, contrary to DTE Electric’s contentions, the ALJ’s “recommendation expressly states that the cease and desist order would not prevent emergency shutoffs for safety reasons.” *Id.* And lastly, Complainant states that the ALJ’s “recommendation

is not advancing public policy as much as it is upholding the MPSC regulations[, which] . . . require notice and an opportunity for a hearing prior to disconnection.” *Id.*

The cease and desist order proposed by the ALJ in this matter was likewise derived from MCL 460.10c, as a result of the ALJ’s finding that DTE Electric violated MCL 460.10t. Therefore, in finding no violation of MCL 460.10t, the ALJ’s proposed cease and desist order cannot be adopted. Further, given the ALJ’s ruling that Complainant’s Exhibit C-17 was only admissible for a limited purpose, “not as evidence of a ‘standard’ for [an appropriate notice when a utility disconnects power based on a claim of unauthorized use]” (PFD, p. 6), the Commission, in agreeing with DTE Electric, finds that the ALJ’s specific recommendation with regard to this form also cannot be adopted.

10. Proposed Investigation

DTE Electric claims that an investigation in this matter is not warranted because “the Company should be able to bill [Complainant] per R 460.126(2)(a) for the full amount of electric service which she received for over five years without payment because her use was unauthorized.” DTE Electric’s exceptions, p. 18.¹⁵

Here, while a billing error, as discussed above, occurred for over five years – a substantial amount of time – the Commission does not find that the ALJ’s proposed investigation into this specific matter is necessary, at this juncture. Nevertheless, should the Commission be apprised of issues relative to its billing rules, the Commission will commence an investigation, when warranted.

THEREFORE, IT IS ORDERED that:

A. Within 30 days of the date of this order, DTE Electric Company shall pay a fine of \$1,400 to the State of Michigan by delivery of a check for that amount to the Commission's Executive Secretary. Fines paid in accordance with this order shall not be recovered in rates or passed through to customers in any manner.

B. DTE Electric Company may backbill Carol Brooks for the undercharge that occurred during the 12-month period immediately preceding the January 6, 2015 discovery of the electric service error. With that backbill, DTE Electric Company shall offer Carol Brooks a payment plan that allows her to pay the backbilled amount over a period of at least 12 months, and the backbill shall take into consideration Carol Brooks's financial circumstances.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of October 25, 2017.

Kavita Kale, Executive Secretary